

## **AGENDA**

NORTH DAKOTA RACING COMMISSION  
Live and Telephone Emergency Meeting  
500 North 9<sup>th</sup> Street, Bismarck, ND  
March 17, 2004  
1:00 p.m. (central)

1. Approval of Simulcast site at Smokey's in West Fargo (Pinto Spirit)
2. Approval of Auditor's breeders report

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If you plan to attend the meeting and will need special facilities or assistance relating to a disability, please contact the Racing Commission at 701-328-4633.

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North Dakota Racing Commission  
Live and Telephone Emergency Meeting  
500 N 9<sup>th</sup> St., Bismarck, ND  
Wednesday, March 17, 2004  
1:00 p.m. (central)

PRESENT:

Chairman James Boehm, Director of Racing Paul Bowlinger, General Counsel Bill Peterson, Auditor Roger Thompson, and Administrative Officer Helen Tessmann.

By Telephone: Commissioners Sue Andrews, Commissioner James Arthaud, Commissioner James Clement, and Commissioner Clarence Frederick, Sr.

OTHERS PRESENT:

Gary Minard, Pinto Spirit/IQ Fund  
John Olson, Attorney for Pinto Spirit/IQ Fund  
Ryan Wisdom, Pinto Spirit/IQ Fund  
Janell Cole, Fargo Forum

Chairman Boehm called the meeting to order at 1:00 p.m. The roll call was taken as indicated below by Director Bowlinger.

Chair Boehm	-	Here
Commissioner Andrews	-	Here
Commissioner Arthaud	-	Here
Commissioner Clement	-	Here
Commissioner Frederick	-	Here

**AGENDA ITEM #1**

**1. Approval of Simulcast site at Smokey's in West Fargo (Pinto Spirit)**

Director Bowlinger stated that commissioners have received the application. The only thing that has changed in substance was we received something from Mr. Minard changing the name from Pinto Spirit to IQ on February 11<sup>th</sup>. The only other possible deficiency in the application is there is not a service agreement with the provider, Lien Games; however, they have stated that they would attach one as soon as they sign it so I don't see that as any fatal flaw. The application appears to be appropriate and we were waiting for gaming to conduct their bi-annual audit and gaming did approve them. This license is now a separate license to conduct pari-mutuel horse racing. I have sent each of you a copy of the considerations the racing commission should look at and then just today I received a fax from Loren Schmidt from Fair Circuit objecting and a note from the Am Vets so with that I think everybody should have all the documents that have been submitted regarding this application.

Chair Boehm asked if there are any questions from the members of the commission.

Commissioner Frederick asked who was objecting.

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Director Bowlinger said that we have received a letter from Loren Schmidt, which reads, "We of the FCHRA have become aware of an proposed OTB site, "Smokey's. There are currently 2 sites in Fargo within ten miles of each other. A third site would probably take patrons and handle from the other two sites. The needs of the public are adequately served by the two existing sites. Fair Circuit Horse Racing Association contributes to the live track. Any loss incurred by Fair Circuit is money that would not be available for live racing. For the reasons stated above, we recommend not allowing a third site in the area." That is signed by Loren Schmidt, Fair Circuit Horse Racing Association.

Chair Boehm asked for any further questions, Clarence?

Commissioner Frederick answered no.

I have a question, this is Sue, I am looking at the Century Code information that was provided by Paul, I guess I will do a little piggy back on the letter that you just read, I have got a question on if a feasible study was completed by IQ or Pinto Spirit.

Gary Minard answered yes, we followed a format that was in the statute where they had a number of items that must be answered in your application and I guess where it's numbered, the item where they request the feasibility we responded in that format just to keep it simple and not overly, make it too formal. We did not want to attach a separate study, bound and all that, so we just kept it in the manner in which they asked for. We did not do a feasibility study, we know that in respect of what Fair Circuit Horse Racing has to say here, in fact North Dakota the pari-mutuel wagering serves the national market which is a 14 billion dollar market. And we were in the offices here a few days ago or a week and half ago, and we got last year's numbers and we noticed that in the 155 million dollars wagered, only a tiny fraction of that is walk-in betters from the metro areas were there is OTBs. I know that in many regards charities, and every charity believes that their own mission is very important as we do and we don't, we are not, in many ways we still, we compete with each other, but everyone's charity and their charitable mission is important to them, so we, it is not that we want to take patrons from the other charity, it is just that we believe in our charitable mission and we also believe in serving the customer. It is the customer that benefits from competition and so we are disappointed that FCHRA feels that way about us. In addition we intend to serve the patrons nationally who call in and place wagers here in North Dakota.

Commissioner Andrews said thank you and I have another question in terms of things that were on the century code. How is this going to benefit the state in horse racing industry? I guess I am struggling with that.

Gary Minard answered, I guess my, by our belief and by our aggressive promoting of horse racing and understanding the complexities of horse wagering, we believe that patrons will find us as a enjoyable means to, for their entertainment, their wagering entertainment and so we will be increasing the handle, and so as we increase the handle then of course the 4 1/2 percent or the percent that will reverts to the state to support the horsemen, that amount that is available to them will be much larger and we are happy to, to be able to through our activity provide more funds for that.

Chair Boehm asked for any other questions from the other commissioners.

Yes Mr. Chairman, this is Commissioner Arthaud, I can agree and understand what the gentlemen is saying about providing provide general benefit for state racing industry and stuff like that, but I was just curious is there any consideration for any direct or accountable benefit to the racing industry in North Dakota or are we just talking general benefit by potentially increasing exposure or is there any thought of contributions to say either track or anything like that?

Gary Minard answered, why I guess I would have to hesitate, are you soliciting a donation from us?

Commissioner Arthaud answered no. No I am not soliciting anything I am just asking.

Gary Minard continued no, but that is an important destination and we are always concerned because we got into charitable gaming, we took over a site that had lost their licenses and so we always had that extra measure we were very attuned to the, you know, the statutory requirements that we have. I know that I cannot state that we haven't got a racing simulcast license yet, we can certainly consider that but if you are soliciting a donation as Mr. Lauer has informed us from the very first day that we were in charitable gaming, there is a certain way that you have to require a the donation for us and then we would be happy to consider it and we have had many requests that really don't meet that requirement in the past and some individuals who requested funds from us that has been dissatisfied but they didn't meet the hurdle that was required. We would be happy to consider that giving money to the tracks directly and supporting that directly.

Commissioner Arthaud stated that was all I was asking, asking if there was that consideration.

This is Commissioner Frederick, Paul, how many sites were there in Fargo before?

Director Bowlinger answered there were two charities. Presently there is a site at the Bowler and there are approximately three separate rooms at the Howard Johnson formally the Townhouse. So there are two charities up, there were two charities operating and now there are two charities operating.

John Olson added and this site would be, for clarification, would be on the western edge of West Fargo.

Chairman Boehm asked if there were any other commissioners have any questions?

Yes, this is Commissioner Clement. Do you, what is the letter from Am Vets?

Director Bowlinger stated we received a letter from a Raymond Rothman from Am Vets Post #9, got that at 10:56 this morning. He became aware that we were considering this issue today and I believe you have had it faxed to you or I will read it for the benefit of Commissioner Frederick who may have not had the fax. It says: To the North Dakota Racing Commission, to whom it may concern. Pinto Spirit was selected by the Gaming and Trustee Board to conduct gaming at Am Vets for one year starting March 1<sup>st</sup>, 2003. They were selected because they stated that some of their charitable donations would go to our local veterans programs. Am Vets Post #9 received very little funds for them. They were contacted numerous times about their promises and their reply would be next month we will take care of it. This never happened. North Dakota

Am Vets did request funds from them and they did donate to the department, that amount was requested and that is signed by Trustee Member, Raymond Rothman.

Commissioner Clement asked, could Mr. Minard comment on that?

Gary Minard answered certainly, would be happy to. The Am Vets is a fraternal organization; they would have preferred that we donated all of the money that we, charitable funds the net proceeds to the Am Vets and unfortunately many of the requests did not fill the statutory requirements. We were in close communications with Mr. Lauer. Fraternal organizations have the extra burden of sustaining their own club and its expenses to operate the building, the bar and the restaurant. There is a practice among fraternal organizations to provide charitable donations to those entities that have banquets and have meetings at these clubs and not in keeping with the statutes to do that. And we had a lot of pressure and we had to restrain those things, we like to be liked by everybody, and we try to get along with everyone. Some requests you just can not fulfill and those that met, you know, the legal requirements we did fund those and there are some things we can do now that were no longer gaming at that site but you know, and of course, Mr. Lauer can confirm we were in constant contact with him regarding the many solicitations that we had for donations. You would like to be able to fund them all, you would, but some you just cannot do it and these fell into that category.

Commissioner Clement asked what were your donations and to whom.

Gary Minard answered that he did not have that data with him but it is on file at the state you know our Schedule C is on file with the state. And the Am Vets did receive the majority of them. They would have liked to have all of them.

Commissioner Clement asked, if you could recall just a lump sum figure.

Commissioner Clement asked if you look at the calendar year 2002 and 2003, what were the, just the lump sum donation and what was total; you don't have to tell me who they were made to but what were the contributions.

Gary Minard stated he did not have that data with me. I didn't come prepared with that information. But we could get fact to you but I don't have that information here with me.

Chairman Boehm asked any further, Commissioner Clement, any further questions.

Commissioner Clement said I think I have another question. I would like Mr. Minard to discuss or to comment on his association with Standing Rock Tribe specifically the Bear Solider renovations project and also some of the properties that were mortgaged and also the tribal judgments against Pinto Spirit.

Gary Minard asked what would you like me to comment on? We, that was our service area for several years and on behalf of the tribe managed Bear Solider renovation project. We had many, many evictions, which is not a very popular thing to do on the reservation, and many, many tribal members took us to court, the tribe paid for all that. We had a management agreement with them and we represented their interest. We had ah, we were their agent for redevelopment of properties and we fulfilled our obligation and finished our project I guess right at the beginning of 2002.

Commissioner Clement asked if there were any tribal judgment against Pinto Spirit?

Gary Minard answered that tribal court is not recognized. Yes, many of the tenants ah, who resisted being evicted and were not evicted, remember we were the agent for the tribe in managing that project, they were not evicted the tribal courts would not let us evict on behalf of the tribe, ah, tribal member who did not pay their utilities or rent and that certainly is a tribal matter so we did not proceed with the eviction. We have no one thrown out of there and no one was evicted from their apartments. And in the beginning of 2002 they took over the management of their own apartments and that's certainly their right to manage their affairs in the matter they find suitable and that was the end of our association with that project.

John Olson added maybe Commissioner Clement's question is more a question about whether or not there are personal or money judgments against Pinto Spirit aside from the business that they were doing the evictions is that what you are asking?

Commissioner Clement answered I would just would like to know more about Pinto Spirit and Gary Minard's association with Standing Rock and with some of the, with Bear Solider renovation, with some other entrusted properties that were mortgaged. I think there is more information out there that we really need to be aware of.

Gary Minard added well I guess ah, Commissioner, you know I have addressed that we, we developed low-income housing, we, we were an agent, we had the power of the agency on behalf of the tribe to build and renovate housing for tribal members, we did this with non-government funds, all commercial funds. We did this with our non-profit corporation and managing the apartments on behalf of the tribe. There was a political group in the tribal council who felt we should do evictions, that the tribal members should pay rent. There is another continent that thought they shouldn't and the continent who thought that they shouldn't, when we finished the project, decided they would manage it themselves and we were not able to ever do any performing evictions and you know, the apartments are owned by tribe. The housing, we finished many units of individual family houses, which were financed conventionally. Like I say, there is no government funds in that. We were meeting some success. There is on the reservation it certainly within their rights to decide whether for apartments that the tribe owns whether tribal members should pay rent or not and we did not get involved in that. We had to, we had to manage it with a financial set of standards that you know the tribe had the latitude were they decide that they pay for the apartment and not require tribal members to pay rent that certainly within their rights. And so they, they decided they would manage the apartment themselves and basically the jest of the matter.

Director Bowlinger added Commissioner Clement, this is Paul, I think John you hit it on the head, are there any judgments against Pinto Spirit.

Gary Minard answered there are judgments regarding, they would not allow us to evict tribal members from housing. They wanted to revert their management agreement to the Bear Solider District so they could run it the way they see fit and that's.....

Director Bowlinger asked Gary Minard, "were there any money judgments?"

Mr. Minard replied, "no there is no money judgment nor has any money changed hands. We haven't, we paid no fines, nothing. They financed the whole project."

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Mr. Minard continued it's all their money; we had the power of the agency to do the renovations on their behalf.

Chairman Boehm asked Commissioner Clement is there anything else.

Commissioner Clement added I have concerns about the integrity specifically with their dealings in Standing Rock and I really think there is information we really need to look into and I would suggest that we.....

(Phone lines dropped off)

Chair Boehm suggested taking a 5-minute break until we get back on line.

(Phone lines back up)

**Commissioner Clement moved to table the approval of the license for the simulcast site at Smokey's in West Fargo until such time as the Racing Commission has time to investigate recent information received by him and to do that as promptly as possible. Commissioner Andrews seconded the motion.**

Chair Boehm stated we have a motion and a second. Jim, how about, what time line are you talking, just till we get further information. Commissioner Clement answered it doesn't have to be long. It would be a week from today. It would be Monday, just so we can gather information allowing us to make judgment on the integrity of the provider.

Chair Boehm stated, ok we have a motion and we have a second. Any further discussion on the issue.

John Olson suggested that you give Pinto Spirits an opportunity to comment or respond to any information that you get.

Chair Boehm asked Commissioner Clement, I am going to ask Pinto Spirit to respond to the question you had on Standing Rock at this point before we take a vote on the motion. Is that ok with you?

John Olson added no, what I mean is that after you get information, additional information; give them an opportunity to comment on it.

Gary Minard, this is, am I allowed, may, may I make a statement here. Is this Commissioner Clement that has made this objection? You know, Commissioner Clement I would like to take exception to your attempt to impugn the integrity of our organization. You know, we're an organization that's in good standing and has fulfilled all the requirements of the state and as well, you know, operated in an ethical fashion. Now, you know, you spread this rumor that somehow you have heard, until we can investigate, you know, I that great exception to that. We have operated; I have had my license application in front of you since January. All we are requesting is that we get approval so that we can execute our license with provider, which could happen very quickly. The other thing I might mention is that you have the power to withdraw a license and at such time if you find you have substance. Rather than to challenge my integrity and to withdraw something from me, withhold something from us, and we would like to proceed,

we have many employees that are counting on working for us, many patrons who would like enjoy our site, let me ask, rather than table granting us our license, how about granting us our license on a temporary basis, much like they do with an alcohol licenses and then if you find that you have an integrity question or some other objection to us continuing on, of course you can withdraw it. There are requirements in the contract with the provider regarding training and financial controls, we have to get a bond and so that will take time too. So there should be plenty of time if you grant us our license to do these things and then certainly you can withdraw it.

Chair Boehm asked Commissioner Clement?

Commissioner Clement answered no I will not withdraw my motion. I would be in favor of doing this very, very rapidly. Perhaps we could schedule a meeting for Friday or Monday but no I want to know more. I just in good consciousness could not vote in favor of granting the license in lieu of recent information.

Commissioner Andrews called for the question. Chair Boehm said the question has been called and asked the Director to read the motion.

Director Bowlinger read the motion is to table the approval of this license until such time as the Racing Commission has time to investigate recent information received by Commissioner Clement and to do that as promptly as possible.

Chair Boehm added the question has been called. Paul, take the roll.

Executive Director Bowlinger called the roll as follows:

Commissioner Andrews	-	Yes
Commissioner Arthaud	-	Yes
Commissioner Clement	-	Yes
Commissioner Frederick	-	Yes
Chairman Boehm	-	Yes

**The motion carried unanimously.**

At this time John Olson, Gary Minard and Ryan Wisdom left the meeting.

Chair Boehm stated that the second item on the agenda is the approval of the auditor's breeders report.

## **AGENDA ITEM #2**

### **2. Approval of Auditor's breeders report**

Director Bowlinger stated that Commissioners you have all received a copy of Breeders report prepared by Roger Thompson. Our administrative code mandates that we approve within 90 days. Our auditor is here and prepared to answer any questions. There is a typo on one page were it states that the Executive Director resigned. That is not correct it is our Administrative Assistant that resigned however I am not taking the typo out because it maybe true.

Chair Boehm asked for a motion to approve the auditor's report. You have all received a copy of it.

**Commissioner Frederick moved to approve the auditor's breeders fund report. Commissioner Clement seconded the motion.**

Chair Boehm asked Director Bowlinger to take the roll.

Executive Director Bowlinger called the roll as follows:

Commissioner Andrews	-	Yes
Commissioner Arthaud	-	Yes
Commissioner Clement	-	Yes
Commissioner Frederick	-	Yes
Chairman Boehm	-	Yes

**The motion carried unanimously.**

Director Bowlinger added that he would have Helen send out to you what she has to do to prepare breeders' fund checks and I think you will be absolutely amazed at the amount of work that goes into it. And we looked last year they were sent out March 3. This year they were sent out March 11<sup>th</sup>. One week later than normal. I think Helen just did a fabulous job considering we are sending out close to \$300,000.00 in assets and I want to personally thank her and express my appreciation to her.

Chair Boehm called for a voice vote to adjourn. All in favor, yes. Meeting adjourned. Director Bowlinger thanked the Commissioners.

The meeting was adjourned at 1:58 p.m. on March 17, 2004.